

J.C., widow of G.C., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Newark, NJ, Employer**

Docket No. 14-299
Issued: October 16, 2014

Thomas Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

On November 25, 2013 appellant, through her attorney, filed a timely appeal from a September 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdictions over the merits of this case.

The issue is whether the evidence establishes that the employee had an emotional condition causally related to compensable work factors.

On June 9, 2011 the employee, then a 51-year-old distribution clerk, filed an occupational claim (Form CA-2) alleging that he sustained depression and anxiety as a result of his federal employment. He stated on the claim form that he was subject to harassment since June 2005.

¹ 5 U.S.C. § 8101 *et seq.*

By letter dated June 10, 2011, OWCP requested additional information. The letter was returned as undeliverable.

By decision dated July 11, 2011, OWCP denied the claim for compensation. The decision was returned as undeliverable.

By letter dated October 5, 2011, the employee, through his representative, requested reconsideration. He indicated that the wrong address had been provided on the claim form. The employee submitted additional evidence, including 11 different statements from appellant regarding his claim and a "Step 1 grievance form" dated November 24, 2010. In the grievance form appellant alleged that the employee had been subject to harassment and bullying from a supervisor for over five years. In a statement dated December 7, 2010, the employee alleged that he was subject to harassment and bullying. He referred to actions of Supervisor Deborah Fortunato-Sholander, alleging that on November 16, 2010 the supervisor followed him around yelling at him. In an October 5, 2011 statement, the employee stated that the bullying began in 2005 after he complained of "disparaging treatment" between himself and a coworker. He stated that he was ordered to sit in the middle of a group while a supervisor Gary Massa scratched his private parts in the employee's face. The employee alleged that Supervisor Fortunato-Sholander completely "picked him apart" over the last six years, following him everywhere, constantly monitoring his work while others come and go as they please. Other statements from the employee refer to specific incidents of alleged harassment, as in a November 2, 2010 incident where the supervisor constantly paged the employee. In an August 24, 2011 letter to the employee's congressional representative, the employee indicated that he had undergone Equal Employment Opportunity (EEO) complaint mediation.

The employee also submitted witness statements from coworkers on October 11, 2011. Some of the statements provide references to having witnessed the supervisor yelling at the employee. In an undated, typed statement, Steven C. Burgher, a coworker, stated that he had frequently heard Supervisor Fortunato-Sholander bark orders at the employee while others received no comments and on one occasion loudly mocked the employee, telling him not to be so stupid.

On March 6, 2012 the employee submitted additional evidence, including letters of commendation he had received. In a letter dated June 11, 2012, an employing establishment human resource specialist stated that the employee's claim was all "hearsay or he said, she said, no facts."

By decision dated February 19, 2013, OWCP denied the claim for compensation. It stated that the evidence was insufficient to establish a compensable work factor.

In a letter dated February 25, 2013, the employee requested a hearing before an OWCP hearing representative. A hearing was held on June 25, 2013. The employee alleged that Supervisor Fortunato-Sholander showed favoritism to another employee (Tony Sinicropi) and he discussed an April 15, 2006 incident when a supervisor Mr. Rufalo badgered him and he filed an incident report. He discussed a July 6, 2010 incident alleging that Supervisor Fortunato-Sholander intentionally made his job more difficult by mixing mail in hampers. The employee also discussed incidents described in his written statements.

By letter dated July 10, 2013, the employee's representative indicated that the employee died on June 26, 2013. In a letter dated July 22, 2013, the supervisor, Mr. Massa stated that he was an acting manager for one month before the employee's "alleged stress." He noted that the employee had made a harassment complaint because he alleged "I supposedly stood up and looked at him and touched my genitals. This was supposedly done in front of five witnesses." A brief July 22, 2013 note from an employing establishment health and resource management specialist stated "most" of the supervisors mentioned at the hearing had either retired or worked in a different district.

By decision dated September 9, 2013, OWCP's hearing representative affirmed the February 19, 2013 decision. The hearing representative found that the employee did not establish a compensable factor based on harassment or bullying at the employing establishment.

LEGAL PRECEDENT

The employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.² This burden includes the submission of detailed description of the employment factors or conditions, which appellant believes that caused or adversely affected the condition or conditions for which compensation is claimed.³ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁶ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷

ANALYSIS

In the present case, the employee filed a claim for an emotional condition related to his federal employment. He provided allegations of harassment, bullying and retaliation and discussed specific incidents. The initial question presented is whether there are compensable work factors established by the evidence.

The Board finds that the evidence of record does not provide sufficient evidence to establish a compensable work factor in this case. The employee made general allegations regarding being yelled at or what he characterized as being bullied by his supervisors. The Board has held that the raising of a voice during the course of a conversation does not warrant a finding of verbal abuse.⁸ Allegations of a difficult relationship with a supervisor, with the perception that the supervisor is treating the employee in an intimidating manner, are not sufficient to establish a compensable work factor.⁹ There must be probative, reliable evidence that supports a finding of harassment or verbal abuse.¹⁰ In the present case, the brief and general comments from coworkers that they witnessed a supervisor yelling at the employee does not establish a compensable work factor. The record indicated that the employee filed a grievance, but the record does not contain any findings with respect to the allegations. There was also an indication that the employee had pursued a claim with the EEO complaint, but again there is no evidence of record with respect to any proceedings or findings in this regard.

With respect to an allegation regarding abusive conduct by a supervisor Mr. Massa at a meeting, the July 22, 2013 response from the supervisor did not support the allegation. The evidence of record is not of sufficient probative value to establish a compensable work factor based on harassment or abusive behavior by supervisors. It is the claimant's burden of proof to establish the claim and the Board finds that the employee did not meet his burden of proof. Since the employee has not established a compensable work factor, the Board will not address the medical evidence.¹¹

On appeal, appellant's representative argues that the evidence was sufficient to establish the claim. The representative referred briefly to a February 28, 2011 EEO settlement agreement, but this document is not of record. For the reasons noted above, the evidence is not sufficient to establish a compensable work factor.

⁷ *Margrethe Lublin*, 44 ECAB 945, 956 (1993).

⁸ *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

⁹ See *D.D.*, Docket No. 11-1400 (issued December 28, 2011).

¹⁰ See *V.L.*, Docket No. 08-1597 (issued January 2, 2009).

¹¹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that the evidence is not sufficient to establish an emotional condition causally related to compensable work factors.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 9, 2013 is affirmed.

Issued: October 16, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board